U.S. Citizenship and Immigration Services

Non-Precedent Decision of the Administrative Appeals Office

In Re: 34891742

Date: DEC. 3, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a youth soccer league, seeks to classify the Beneficiary, a soccer coach, as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding the Petitioner did not show the Beneficiary satisfied at least three of the initial evidentiary criteria. Subsequently, the Director dismissed the Petitioner's motion to reconsider the decision. The matter is now before us on appeal. 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes visas available to immigrants with extraordinary ability if:

> (i) the alien has extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation,
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> (ii) the alien seeks to enter the United States to continue work in the area of extraordinary ability, and
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> (iii) the alien's entry into the United States will substantially benefit prospectively the United States.

The term "extraordinary ability" refers only to those individuals in "that small percentage who have risen to the very top of the field of endeavor." 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate sustained acclaim and the recognition of achievements in the field through a one-time achievement (that is, a major, internationally recognized award) or qualifying documentation that meets at least three of the ten categories listed at 8 C.F.R. § 204.5(h)(3)(i) – (x) (including items such as awards, published material in certain media, and scholarly articles). The regulation at 8 C.F.R. § 204.5(h)(4) allows a petitioner to submit comparable material if the standards at 8 C.F.R. § 204.5(h)(3)(i)-(x) do not readily apply to the individual's occupation.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

A. Evidentiary Criteria

Because the Petitioner has not indicated or established the Beneficiary's receipt of a major, internationally recognized award, the Beneficiary must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. §204.5(h)(3)(i)-(x). The Director determined the Petitioner did not show the Beneficiary fulfilled any of the seven claimed categories of evidence. On appeal, the Petitioner maintains the Beneficiary's qualification for five criteria. Issues and prior eligibility claims not raised on appeal are waived. *See, e.g., Matter of O-R-E-*, 28 I&N Dec. 330, 336 n.5 (BIA 2021) (citing *Matter of R-A-M-*, 25 I&N Dec. 657, 658 n.2 (BIA 2012)); *see also Giday v. INS*, 113 F.3d 230, 234 (D.C. Cir. 1997) (declining to address a "passing reference" to an argument in a brief that did not provide legal support). For the reasons discussed below, the Petitioner did not demonstrate the Beneficiary meets at least three categories of evidence.

> *Documentation of the alien's receipt of lesser nationally or internationally recognized prizes or awards for excellence in the field of endeavor.* 8 C.F.R. § 204.5(h)(3)(i).

The record reflects the Petitioner claimed the Beneficiary's eligibility based on another individual receiving an award. Specifically:

> [The Beneficiary's] coaching skill has been instrumental in individual player achievements, such as [redacted] being named the Male Player of the Season in the [redacted] awards in 2019 in the same [redacted] Awards. This recognition reflects [the Beneficiary's] commitment to nurturing talent and facilitating player development within the football community . . . .

In determining eligibility for this criterion, we look to the plain language of the regulation at 8 C.F.R. § 204.5(h)(3)(i), requiring "[d]ocumentation of the alien's receipt" of prizes or awards. In addition, we consider the term "alien's receipt" using its ordinary, common meaning. *See, e.g., Perrin v. United States*, 444 U.S. 37, 42 (1979) ("A fundamental canon of statutory construction is that, unless otherwise defined, words will be interpreted as taking their ordinary, contemporary, common meaning . . . ."). Moreover, the description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes.[1] Thus, prizes or awards not received by or bestowed upon the Beneficiary, such as [redacted] award for Male Player of the Season, do not meet this regulatory criterion.

Similarly, the Petitioner asserted the Beneficiary's "remarkable achievements have been further acknowledged by the [redacted] through [redacted] receipt of the [redacted] of the Year award in 2019." The provided article indicates the club received the award rather than the Beneficiary. In fact, the article makes no mention of the Beneficiary being a named awardee. Again, the description of this type of evidence in the regulation indicates that the focus should be on the person's receipt of the awards or prizes, as opposed to the employer's receipt of the awards or prizes.[2]

Because the Petitioner did not show that the Beneficiary received any of these awards, we need not determine whether the awards qualify as nationally or internationally recognized awards for excellence.[3]

The Petitioner also presented an article posted on southwales.ac.uk reporting on the 2018 [redacted] Awards. The article states that "[a]cross Year Two students it was [redacted] [the Beneficiary] who claimed the [redacted] Awards title." Although the article covers the overall [redacted] Awards and indicates that "[l]aunched in 2014 as a joint venture between [redacted] and the [redacted] to provide a solid theoretical and practical foundation of professional coaching skills, as well as opportunities to acquire nationally recognized vocational qualifications, the degree course also serves to identify up and coming industry talent through its annual awards scheme," the article provides no further information relating to the Beneficiary's specific award – the [redacted] Award. Moreover, the Petitioner did not offer any other evidence establishing the national or international recognition for excellence of the award. Without additional information or documentation, the Petitioner has not demonstrated the recognition for excellence in the field on a national or international scale.

Accordingly, the Petitioner has not shown the Beneficiary satisfies this criterion.

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[1] *See generally* 6 USCIS Policy Manual F.2(B)(1), https://www.uscis.gov/policymanual.

[2] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

[3] *See INS v. Bagamasbad*, 429 U.S. 24, 25-26 (1976) (stating that agencies are not required to make "purely advisory findings" on issues that are unnecessary to the ultimate decision); *see also Matter of L-A-C-*, 26 I&N Dec. 516, n.7 (declining to reach alternative issues on appeal where applicants do not otherwise meet their burden of proof).

> *Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.* 8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner claimed the Beneficiary's membership with the Football Association (FA) Coaches' Club meets this criterion. USCIS determines if the association for which the person claims membership requires that members have outstanding achievements in the field as judged by recognized experts in that field.[4] The petitioner must show that membership in the association requires outstanding achievements in the field for which classification is sought, as judged by recognized national or international experts.[5]

The Petitioner provided evidence reflecting that an FA Licensed Coach meets the following requirements: holds a coaching qualification, has an FA enhanced criminal records check, commits to a minimum level of continuous professional development (CPD), retains in-date workshop and emergency certificates, joins the club, and has adequate coaching insurance. Furthermore, "[i]f you meet the requirements and are invited to join the scheme you will be granted your FA Coaching Licence."

However, the Petitioner has not established how such requirements qualify as "outstanding achievements" rather than basic coaching certification. Moreover, the Petitioner did not show whether outstanding achievements are considered in order to be "invited to join the scheme" instead of completing minimum coaching conditions. In addition, the Petitioner did not demonstrate whether recognized national or international experts judge an individual's membership with the association, as required by the regulation.

For these reasons, the Petitioner did not establish the Beneficiary fulfills this criterion.

> *Published material about the alien in professional or major trade publications or other major media, relating to the alien's work in the field for which classification is sought. Such evidence shall include the title, date, and author of the material, and any necessary translation.* 8 C.F.R. § 204.5(h)(3)(iii).

This criterion not only requires published material about the individual relating to work in the field but also requires the material to have been published in professional or major trade publications or other major media. Here, the Petitioner provided around two dozen articles posted on various websites, such as napavalleyregister.com, npsl.com, patch.com, protagonistsoccer.com, liphookherald.com, haslemerherald.com, bordonherald.com, farnhamherald.com, dailyecho.co.uk, efltrust.com, and soccerbayarea.com. However, the Petitioner did not offer evidence or show the material was published or posted in professional or major trade publications or other major media.[6]

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[4] *See generally* 6 USCIS Policy Manual, *supra*, at F.2(B)(1).

[5] *Id.*

[6] *See generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(1) (in evaluating whether a submitted publication is a professional publication, major trade publication, or major media, relevant factors include the intended business audience (for professional and major trade publications) and the relative circulation, readership, or viewership (for major trade publications and other major media).

Simply submitting articles without establishing the professional or major trade or other major nature of the publications or media is insufficient to meet every element of this criterion. Therefore, we need not determine whether any of the articles qualify as published material about the Beneficiary relating to his work.[7]

Accordingly, the Petitioner did not demonstrate the Beneficiary satisfies this criterion.

B. O-1 Nonimmigrant Status

We note that the record reflects that the Beneficiary received O-1 status, a classification reserved for nonimmigrants of extraordinary ability. Although USCIS has approved O-1 nonimmigrant visa petitions filed on behalf of the Beneficiary, the prior approval does not preclude USCIS from denying an immigrant visa petition which is adjudicated based on a different standard – statute, regulations, and case law. Many Form I-140 immigrant petitions are denied after USCIS approves prior nonimmigrant petitions. *See, e.g., Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25 (D.D.C. 2003); *IKEA US v. US Dept. of Justice*, 48 F. Supp. 2d 22 (D.D.C. 1999); *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103, 1108 (E.D.N.Y. 1989), *aff'd*, 905 F. 2d 41 (2d. Cir. 1990). Furthermore, our authority over the USCIS service centers, the office adjudicating the nonimmigrant visa petition, is comparable to the relationship between a court of appeals and a district court. Even if a service center director has approved a nonimmigrant petition on behalf of an individual, we are not bound to follow that finding in the adjudication of another immigration petition. *See La. Philharmonic Orchestra v. INS*, No. 98-2855, 2000 WL 282785, at *2 (E.D. La. 2000).[8]

III. CONCLUSION

The Petitioner did not show the Beneficiary satisfies three categories of evidence, discussed above. Although the Petitioner also argues the Beneficiary's eligibility for the judging criterion under 8 C.F.R. § 204.5(h)(3)(iv) and the display criterion under 8 C.F.R. § 204.5(h)(3)(vii) through the submission of comparable evidence under 8 C.F.R. § 204.5(h)(4), we need not reach these grounds because the Beneficiary cannot fulfill the initial evidentiary requirement of three under 8 C.F.R. § 204.5(h)(3). We also need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Accordingly, we reserve these issues.[9]

Nevertheless, we have reviewed the record in the aggregate, concluding it does not support a conclusion that the Petitioner has established the Beneficiary's acclaim and recognition required for the classification sought. The Petitioner seeks a highly restrictive visa classification for the Beneficiary, intended for individuals already at the top of their respective fields, rather than those progressing toward the top. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994) (concluding that even major league level athletes do not automatically meet the statutory standards for classification as an individual of "extraordinary ability,"); *Visinscaia*, 4 F. Supp. 3d at 131 (internal quotation marks omitted) (finding that the extraordinary ability designation is "extremely restrictive by design,"); *Hamal v. Dep't of Homeland Sec. (Hamal II)*, No. 19-cv-2534, 2021 WL 2338316, at *5 (D.D.C. June 8, 2021), *aff'd*, 2023 WL 1156801 (D.C. Cir. Jan. 31, 2023) (determining that EB-1 visas

[7] *See Bagamasbad*, 429 U.S. at 25-26 (1976); *see also L-A-C-*, 26 I&N Dec. at 516, n.7.
[8] *See also generally* 6 *USCIS Policy Manual*, *supra*, at F.2(B)(3).
[9] *See Bagamasbad*, 429 U.S. at 25-26 (1976); *see also L-A-C-*, 26 I&N Dec. at 516, n.7.

are "reserved for a very small percentage of prospective immigrants"). *See also Hamal v. Dep't of Homeland Sec. (Hamal I)*, No. 19-cv-2534, 2020 WL 2934954, at *1 (D.D.C. June 3, 2020) (citing *Kazarian,* 596 at 1122 (upholding denial of petition of a published theoretical physicist specializing in non-Einsteinian theories of gravitation) (stating that "[c]ourts have found that even highly accomplished individuals fail to win this designation")); *Lee v. Ziglar*, 237 F. Supp. 2d 914, 918 (N.D. Ill. 2002) (finding that "arguably one of the most famous baseball players in Korean history" did not qualify for visa as a baseball coach). Here, the Petitioner has not shown the significance of the Beneficiary's work is indicative of the required sustained national or international acclaim or it is consistent with a "career of acclaimed work in the field" as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990); *see also* section 203(b)(1)(A) of the Act. Moreover, the record does not otherwise demonstrate the Beneficiary has garnered national or international acclaim in the field, and he is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2). The record does not contain sufficient evidence establishing the Beneficiary among the upper echelon in his field.

For the reasons discussed above, the Petitioner has not demonstrated the Beneficiary's eligibility as an individual of extraordinary ability. The appeal will be dismissed for the above stated reasons, with each considered as an independent and alternate basis for the decision.

ORDER: The appeal is dismissed.